

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

74-2223

B
P/S

United States Court of Appeals

For the Second Circuit.

NORMAN B. OPPENHEIMER, AS CUSTODIAN FOR
BARBARA ANN OPPENHEIMER, NANCY ELLEN
OPPENHEIMER, BARBARA ANN OPPENHEIMER now
known as BARBARA ANN TURNER, INDIVIDUALLY,
NANCY ELLEN OPPENHEIMER, INDIVIDUALLY, and
EVELYN OPPENHEIMER, INDIVIDUALLY,

Plaintiffs-Appellants,

-VS.

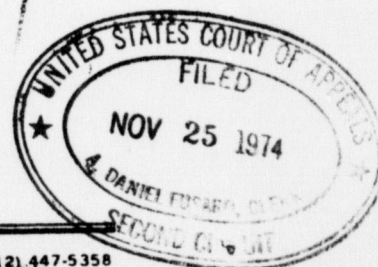
HAROLD BERNSTEIN, RAYMOND BERNSTEIN, JOSEPH
SCHACTER, MORTIMER TOVER, INDIVIDUALLY, and as
President of Hancock Securities Corporation, a New York
Corporation, GLADYS TOVER, INDIVIDUALLY, and as
Secretary, Treasurer and Director of Hancock Securities
Corporation, a New York Corporation, and HANCOCK
SECURITIES CORPORATION, A NEW YORK
CORPORATION,

Defendants-Appellees.

*On Appeal From The United States District Court
For The Southern District Of New York*

Appellants' Appendix

BERNARD ULANO
Attorney for Plaintiffs-Appellants
150 Fifth Avenue
New York, N.Y. 10011
(212) 255-4710



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DOCKET ENTRIES

73 Civ. 969

NORMAN B. OPPENHEIMER, etc. et al

Vs.

HAROLD BERNSTEIN et al

Mar. 5, 1973 Filed Complaint and Issued Summons.

Mar. 26, 1973 Filed Answer of defts. Mortimer Tover, Gladys Tover and Hancock Securities Corp. to the complaint.

Apr. 2, 1973 Filed summons with Marshal's Return of Service.

Apr. 23, 1973 Filed Pls. Affdvt in opposition to Motion.

Apr. 23, 1973 Filed Pls. Memo in opposition of motion to dismiss complaint.

Apr. 13, 1973 Filed defts. memo in support of motion to dismiss complaint.

June 27, 1973 Filed Opinion No. 39627.

May 24, 1974 Filed Default Judgment and order. Judgment entered.

June 25, 1974 Filed notice of appearance for plaintiffs

Aug. 9, 1974 Filed Magistrate Hartenstine's report

Aug. 9, 1974 Filed memo endorsed on Magistrate's report.

Sept. 5, 1974 Filed Notice of Appeal from order entered on 8/9/74

Sept. 24, 1974 Pre-trial conference held by Metzner, J.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
NORMAN B. OPPENHEIMER, AS CUSTODIAN
FOR BARBARA ANN OPPENHEIMER, NANCY
ELLEN OPPENHEIMER, BARBARA ANN
OPPENHEIMER now known as BARBARA ANN
TURNER, INDIVIDUALLY, NANCY ELLEN
OPPENHEIMER, INDIVIDUALLY, and
EVELYN OPPENHEIMER, INDIVIDUALLY,

Plaintiffs,

-against-

C. M. M.

HAROLD BERNSTEIN, RAYMOND BERNSTEIN,
JOSEPH SCHACTER, MORTIMER TOVER,
INDIVIDUALLY, and as President of Hancock
Securities Corporation, a New York Corp-
oration, GLADYS TOVER, INDIVIDUALLY,
and as Secretary, Treasurer and Director
of Hancock Securities Corporation, a New York
Corporation, and HANCOCK SECURITIES
CORPORATION, A NEW YORK CORPORATION,

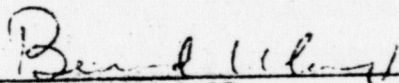
73 Civ. 969

NOTICE OF
APPEAL

Defendants.

----- x
Notice is hereby given that NORMAN B. OPPENHEIMER,
as custodian for BARBARA ANN OPPENHEIMER, NANCY ELLEN
OPPENHEIMER, BARBARA ANN OPPENHEIMER now known as
BARBARA ANN TURNER, Individually, NANCY ELLEN OPPENHEIM-
ER, Individually, and EVELYN OPPENHEIMER, Individually, plain-
tiffs above named, hereby appeal to the United States Court of
Appeals for the Second Circuit from the order entered on the 9th day
of August, 1974, filed on the 9th day of August, 1974, in which the
Honorable Charles M. Metzner, United States District Judge, Southern
District of New York, vacated a judgment of default against the defen-
dant HANCOCK SECURITIES CORPORATION, a New York Corporation,
which judgment was previously signed by the Honorable Charles M.
Metzner on May 22, 1974 and entered on May 24, 1974, and dismissed
the complaint as to the defendant HANCOCK SECURITIES CORPORA-
TION, a New York Corporation.

Dated September 4, 1974
New York, New York


BERNARD ULANO,
attorney for Plaintiffs,
150 Fifth Avenue
New York, New York 10011
Tele: (212) 255-4710

VERIFIED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NORMAN B. OPPENHEIMER, AS CUSTODIAN FOR
BARBARA ANN OPPENHEIMER, NA NOY ELLEN
OPPENHEIMER, BARBARA ANN OPPENHEIMER a/k/a
BARBARA ANN SCHWARTZ, Individually,
NANCY ELLEN OPPENHEIMER, Individually, and
EVELYN OPPENHEIMER, Individually,

Plaintiffs,

-against-

HAROLD BERNSTEIN, RAYMOND BERNSTEIN, JOSEPH
SCHACTER, MORTIMER TOVER, Individually and as
President and Director of Hancock Securities
Corporation, a New York Corporation, GLADYS
TOVER, Individually and as Secretary, Treasurer
and Director of Hancock Securities Corporation,
a New York Corporation, and HANCOCK SECURITIES
CORPORATION, a New York Corporation,

Defendants.

VERIFIED COMPLAINT

73 CIV 969

JUDGE METZNER

-----x
Plaintiffs, by themselves, for their verified complaint against
the defendants herein, alleges as follows:

I

This Court has jurisdiction over this action, violations by the
defendants and each of them, of sections 77q(a) and 78j(b) Title 15
of The United States Code, that:

II

Upon information and belief, at all times pertinent herein,
HANCOCK SECURITIES CORPORATION, ("HANCOCK"), was a New York Corporation
with its principal place of business in City, County and State of
New York, a dealer in securities, registered with the SECURITIES AND
EXCHANGE COMMISSION ("SEC") as a member of the NATIONAL ASSOCIATION
OF SECURITIES DEALERS, INC., ("NASD"), MORTIMER TOVER ("M. TOVER"),
was President, Director and subordinated creditor, pursuant to a
subordinated loan agreement dated August 8, 1969, modified October 10,
1969, filed with the SEC and NASD, GLADYS TOVER ("G. TOVER"), was
Secretary, Treasurer and Director of HANCOCK.

III

Upon information and belief, at all times pertinent herein,
HAROLD BERNSTEIN ("H. BERNSTEIN"), and RAYMOND BERNSTEIN ("R. BERN-
STEIN"), were subordinated creditors of HANCOCK, pursuant to written

subordinated loan agreements dated October 8, 1969, which extended and modified a subordinated loan agreement dated October 25, 1968, amended December 31, 1968, filed with the SEC and NASD.

IV

Upon information and belief, at all times pertinent herein, JOSEPH SCHACTER ("SCHACTER"), was employed as Vice President of Northville Industries Incorporated, a New York Corporation, controlled by H. BERNSTEIN and R. BERNSTEIN, and as President of Amherst Securities, a corporation, a broker dealer, in securities, registered with the SEC and NASD.

V

Upon information and belief, at all times pertinent herein, the individual defendants and each of them above named, acted for themselves and/or as agent for other defendants, and as officers and/or directors, and/or agents of the corporate defendant.

VI

Upon information and belief, at all times pertinent herein, and upon date or dates better known to defendants, defendants and each of them agreed together and adopted a plan to defraud plaintiffs or did aid and abet in the carrying out of said agreement and plan.

VII

Upon information and belief, and on or about January 9, 1968, the plaintiffs through its agent, Vilas & Hickey, a partnership engaged in business as a broker and dealer of securities, with a principal place of business in the City, County and State of New York, sold on behalf of the plaintiffs, to HANCOCK, as purchaser, 5000 shares of the capital stock of Micronetic Corporation, a Delaware Corporation, at a net aggregate price to plaintiffs of \$22,500. The agreed settlement date for sale and purchase was January 15, 1968, and timely written confirmation reflecting said sale and purchase and settlement date was given to plaintiffs and HANCOCK, by Vilas & Hickey.

VIII

At all times pertinent hereto, HANCOCK had due notice and knowledge of the fact that Vilas & Hickey was acting as agent for plaintiffs.

IX

Pursuant to its agreements, Vilas & Hickey as agent for plaintiffs made timely delivery of certificates reflecting the shares purchased by HANCOCK.

X

HANCOCK, without reasonable justification, and despite full and complete performance by Vilas & Hickey as agent for plaintiffs of all the terms and conditions of its agreement with HANCOCK, returned the certificates to Vilas & Hickey on or about January 17, 1963, and has failed and refused to accept or to pay for the same.

XI

Thereafter, upon information and belief, HANCOCK entered into an agreement with H. BERNSTEIN and R. BERNSTEIN where all assets of HANCOCK without limitation were assigned and distributed under the direction of SCHACTER, to H. BERNSTEIN and R. BERNSTEIN, excluding plaintiffs as creditors of HANCOCK.

XII

Upon information and belief, at the time of assignment and distribution of HANCOCK's assets, the defendants knew the plaintiffs were unpaid creditors of HANCOCK.

XIII

Upon information and belief, at the time of assignment and distribution of HANCOCK'S assets, the defendants knew they were violating Rule 240 15c 3-1 under the Securities Exchange Act of 1934.

XIV

Upon information and belief, at the time of assignment and distribution of HANCOCK'S assets, the defendants knew they were violating the terms and conditions of the subordinated loan agreements entered into by HANCOCK with H. BERNSTEIN and R. BERNSTEIN, and M. TOVER.

XV

Upon information and belief, HANCOCK, thru its then Counsel, by mail, notified the SEC and NASD, that all creditors of HANCOCK were paid.

XVI

The defendants knowingly and willfully violated provisions of the Securities Act of 1933 and Securities Exchange Act of 1934, and the Rules thereunder, to obtain money and property belonging to plaintiffs by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading, and did intentionally engage in transactions, acts, practices and a course of business, which would and did operate as a fraud and deceit, and employed manipulative and deceptive practices, to cheat, hoodwink and injure the plaintiffs.

WHEREFORE, plaintiffs demand judgment, as follows:

- a) against defendants, the amount of \$22,500
with interest from January 15, 1968 to date
of satisfaction;
- b) against defendants, punitive damages, in the
amount of \$2,250,000,

together with such other and further relief as to the Court may
deem just, proper and equitable.

Dated: New York, N.Y.
February 20, 1973

NORMAN B. OPPENHEIMER, for himself,
as custodian for Barabara Ann
Oppenheimer, for Nancy Ellen
Oppenheimer, BARBARA ANN OPPENHEIMER
a/k/a BARBARA ANN SCHWARTZ, for her-
self, NANCY ELLEN OPPENHEIMER, and
EVELYN OPPENHEIMER, for herself,
plaintiffs
c/o TRAFALGAR SQUARE, LTD.,
525 Seventh Avenue
NEW YORK, NEW YORK, 10018
Telephone: 212-244-3201

7.

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

NORMAN B. OPPENHEIMER, being duly sworn, deposes and says:

That he is the plaintiff as custodian for Barabara Ann Oppenheimer, for Nancy Ellen Oppenheimer in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to these matters, he believes it to be true.

Sworn to before me, this
5th day of February, 1973.

Norman B. Oppenheimer
Norman B. Oppenheimer

STATE OF NEW YORK)
 ss.:
COUNTY OF NASSAU)

Tilove Shonkoff
TILLOE SHONKOFF
Notary Public, State of New York
No. 24 3973105
Qualified in N.Y. Co. & Kings Co.
Commission Expires March 30, 1974

BARBARA ANN SCHWARTZ, formerly known as Barbara Ann Oppenheimer, being duly sworn, deposes and says:

That she is the plaintiff in the above entitled action; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, she believes it to be true.

Sworn to before me, this
2nd day of February, 1973.

Barbara Ann Schwartz
Barbara Ann Schwartz

[Signature]
Notary Public, State of New York
Qualified in Queens County
Commission Expires March 30, 1974

STATE OF NEW YORK)
 ss. :
COUNTY OF NEW YORK)

NANCY ELLEN OPPENHEIMER, being duly sworn, deposes and says:

That she is the plaintiff in the above entitled action; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to these matters, she believes it to be true.

Sworn to before me, this

Nancy Ellen Oppenheimer

26 day of February, 1973.

STATE OF NEW YORK)
 ss. :
COUNTY OF NASSAU)

Handwritten: JAMES C. FALLAHEE
NOTARY PUBLIC, State of New York
No. 111-150263
Qualified in New York County
Term Expires March 30, 1973

EVELYN OPPENHEIMER, being duly sworn, deposes and says:

That she is the plaintiff in the above entitled action; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, she believes it to be true.

Evelyn Oppenheimer
Evelyn Oppenheimer

Sworn to before me, this

27 day of February, 1973.

Handwritten: JAMES C. FALLAHEE
NOTARY PUBLIC, State of New York
No. 111-150263
Qualified in Queens County
Term Expires March 30, 1973

9

DEFAULT JUDGMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

June 25 1974

NORMAN B. OPPENHEIMER, AS CUSTODIAN FOR
BARBARA ANN OPPENHEIMER, NANCY ELLEN
OPPENHEIMER, BARBARA ANN OPPENHEIMER a/k/a
BARBARA ANN SCHWARTZ, INDIVIDUALLY, NANCY
ELLEN OPPENHEIMER, INDIVIDUALLY, and
EVELYN OPPENHEIMER, INDIVIDUALLY,

Plaintiffs,

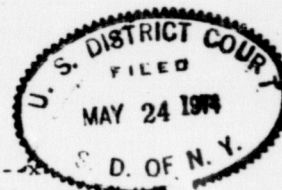
-against-

HAROLD BERNSTEIN, RAYMOND BERNSTEIN,
JOSEPH SCHACTER, MORTIMER TOVER, INDIVIDUALLY, and as President of Hancock Securities Corporation, a New York Corporation, Gladys Tover, INDIVIDUALLY, and as Secretary, Treasurer and Director of Hancock Securities Corporation, a New York Corporation, and HANCOCK SECURITIES CORPORATION, A New York Corporation,

Defendants.

C. M. M.

73 Civ 969



It appearing that the summons and complaint herein having been duly served on the defendant HANCOCK SECURITIES CORPORATION, a New York Corporation by a Deputy United States Marshal on March 17, 1973, and it further appearing that the defendant HANCOCK SECURITIES CORPORATION, a New York Corporation having not/appeared, answered or made properly any motion with respect to the complaint herein,

Now, therefore upon reading the annexed affidavit of Norman B. Oppenheimer, sworn to on the 22th day of May, 1974 and the certificate of Raymond F. Burghardt, Clerk of the Court, United States District Court, Southern District of New York noting the default of the above named defendant for failing to/appear, answer or plead in the above entitled action:

Ordered, Adjudged and Decreed: That the plaintiffs, Norman B. Oppenheimer, as custodian for Barbara Ann Oppenheimer, Nancy Ellen Oppenheimer, Barbara Ann Oppenheimer, a/k/a Barbara Ann Schwartz, Individually, Nancy Ellen Oppenheimer, Individually, and Evelyn Oppenheimer, Individually, recover from the defendant HANCOCK SECURITIES CORPORATION, a New York Corporation, the damages sustained by them on account of the claims for relief demanded in the complaint, together with

MICROFILM
MAY 28 1974

interests and costs of this action; and it is further

Ordered, Adjudged and Decreed: That this matter be referred to Magistrate Hartenshue, to determine the amount of damages; and it is further

Ordered Adjudged and Decreed: That at such inquest the Court shall assess damages sustained by the plaintiffs, and that the Court shall enter judgment accordingly.

Dated: May 22nd, 1974
New York, New York

Charles H. Westbrook
United States District Judge

JUDGMENT ENTERED - 5/24/74

Raymond F. Berghardt
CLERK

NOTICE OF HEARING OF INQUEST DATED MAY 29, 1974

UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT

UNITED STATES COURTHOUSE

FOLEY SQUARE

NEW YORK, N. Y. 10007

(212) 264-6097, 6098

CHARLES J. HARTENSTINE, JR.
MAGISTRATE

May 29, 1974

* Norman B. Oppenheimer, Esq.
525 Seventh Avenue
New York, N.Y. 10018

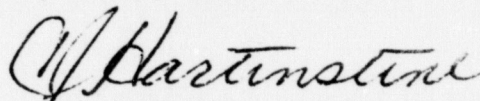
Re: Norman B. Oppenheimer, et al v. Harold
Bernstein, et al., 73 Civ. 969 (CMM)

Dear Mr. Oppenheimer:

This letter will confirm that pursuant to the order of Judge Metzner filed May 24, 1974, an inquest to determine the amount of damages sustained by plaintiffs will be held on June 25, 1974 at 2:00 p.m., in Room 1108 of this building.

Please be prepared at that time to offer evidence, and to submit proposed findings of fact and conclusions of law, as well as a memorandum of law, on the measure of damages in this case.

Very truly yours,



Charles J. Hartenstine
United States Magistrate

* Mr. Oppenheimer
c/o Bernard Ulano, Esq.

MAGISTRATE'S REPORT OF INQUEST

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

NORMAN B. OPPENHEIMER, as
Custodian, et al.,

Plaintiffs,

-against-

HAROLD BERNSTEIN, et al.,

Defendants.

----- X

MAGISTRATE'S
REPORT

73 Civ. 969
(CMM)

On May 22, 1974, plaintiffs obtained an order signed by Judge Metzner (1) granting judgment in favor of plaintiffs against defendant Hancock Securities Corporation ("Hancock") on default, and (2) referring this case to the undersigned for an inquest to determine the amount of plaintiffs' damages. Judgment in accordance with that order was entered May 24, 1974.

From the record made during the inquest, and from my review of the court file (including prior proceedings before Judge Metzner), it appears that this court lacks jurisdiction of the subject matter. Therefore, it is my recommendation that the judgment

entered against Hancock be vacated and that this action be dismissed under Rule 12(h)(3) of the Federal Rules of Civil Procedure.

I.

Rule 12(h)(3) provides:

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."(Underlining added)

Plaintiffs have the burden of proving jurisdiction. The issue of whether the District Court has jurisdiction over the subject matter may be raised at any time. And the court must raise this issue on its own motion if it is not otherwise presented. John Birch Society v. National Broadcasting Company, 337 F.2d 194, 199 (CA2 1967); Hackner v. Guaranty Trust Co., 417 F.2d 95, 97 (CA2 1941); Central Mexico Light & Power Co. v. Munch, 116 F.2d 85, 87 (CA2 1940). Lack of jurisdiction of a District Court over the subject matter of an action cannot be waived by the parties. United States v. Griffin, 303 U.S. 226, 229 (1938).

II.

The complaint was filed March 5, 1973. It alleges that

"This Court has jurisdiction over this action, violations by the defendants and each of them, of sections 77q(a) and 78j(b) Title 15 of the United States Code...."(¶1)

Although not expressed, it is implicit in this allegation that plaintiffs seek to invoke the jurisdiction of this court under federal securities laws. For example, Section 22(a) of the Securities Act of 1933 (15 U.S.C. §77v(a)) for alleged violations of Section 17(a) of the 1933 Act (15 U.S.C. §77q(a)), and Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. §78aa) for alleged violations of Section 10(b) of the 1934 Act (15 U.S.C. §78j(b)).

It is clear from prior proceedings, however, that no such jurisdiction lies; that the sole basis for jurisdiction open to plaintiffs is diversity of citizenship under 28 U.S.C. §1332. On April 13, 1973, defendants Harold Bernstein, Raymond Bernstein and Joseph Schacter filed a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure for an order dismissing the complaint, as against each of them,

on the ground that it failed to state a claim upon which relief can be granted. Judge Metzner granted that motion, noting in a memorandum filed June 27, 1973, that

"We are dealing here with a pro se complaint alleging violations of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78j(b)) and Section 17(a) of the Securities Act of 1933 (15 U.S.C. §77q)."

But Judge Metzner then went on to say that

"What we have here is a simple claim for breach of contract."

Taking this ruling as the law of the case, the burden is on plaintiffs to show that their claims for breach of contract exceed the sum of \$10,000 and are between citizens of different States, within 28 U.S.C. §1332.

III.

Title 28, United States Code, Section 1332 provides in part:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between -

(1) citizens of different
States

* * *

(c) For the purposes of this section..., a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business...."

Assuming without deciding that plaintiffs' claims would satisfy the first requirement concerning jurisdictional amount, the record shows that plaintiffs cannot meet the second requirement concerning diversity of citizenship. All the plaintiffs and Hancock were citizens of the same State when this action was commenced.

For the District Court to have jurisdiction over the subject matter under 28 U.S.C. §1332 there must be complete diversity of citizenship. This means that the citizenship of each plaintiff must be diverse from the citizenship of each defendant, i.e., each plaintiff must be able to sue each defendant. Salerno v. American League, 310 F. Supp. 729, 130 (SDNY 1969). A person is a citizen of the State where he is domiciled, i.e., where he resides with the intention of making that place his home indefinitely. Williamson v. Osenton, 232 U.S. 619 624 (1914). A corporation, for diversity purposes, is

deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. 28 U.S.C. §1332(c).

Measured by these standards, the record at the inquest and papers filed with this court show that all the plaintiffs and Hancock are citizens of the State of New York. The inquest was held before me on June 25, 1974. At that time plaintiffs were represented by counsel; each plaintiff appeared and testified as a witness in support of the plaintiffs' case; and exhibits were offered by plaintiffs and received in evidence. Each plaintiff testified that he, or she (as the case may be), resides in the State of New York. Plaintiff Barbara Ann Oppenheimer testified that she was born on March 20, 1947; plaintiff Nancy Ellen Oppenheimer testified that she was born on June 10, 1950. Although no allegation is made in the complaint concerning the citizenship of plaintiffs, it seems to be conceded by each plaintiff that on March 5, 1973, when the complaint was filed, each plaintiff had his or her domicile in the State of New York.

The complaint alleges, and papers filed with this

court by plaintiffs reflect, that Hancock is a corporation organized and existing under the laws of the State of New York. The affidavit of plaintiff Norman B. Oppenheimer, sworn to on May 22, 1974, and submitted in support of plaintiffs' application for a judgment on default states:

"I make this affidavit in support of the annexed application for an order for the taking of an inquest upon the default of the defendant Hancock Securities Corporation, a New York Corporation, for failing to properly appear, answer or plead herein."

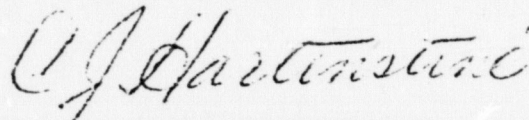
Two subordinated loan agreements entered into by Hancock, one on August 6, 1969, and the other on October 8, 1969, and both signed and acknowledged by the president of Hancock, describe Hancock as "a corporation duly organized and existing under and by virtue of the laws of the State of New York...." Copies of these agreements were attached as Exhibits F and G to the affidavit of plaintiff Norman B. Oppenheimer, sworn to on April 10, 1973, and submitted in opposition to the above-mentioned motion to dismiss by three co-defendants.

With the record in this posture, there is no diversity of citizenship and no subject matter on which the judgment

of this court may operate. Accordingly, it is my recommendation that the default judgment entered against the defendant Hancock Securities Corporation on May 24, 1974, be vacated and that this action be dismissed for lack of jurisdiction of this court over the subject matter.

Dated: New York, N.Y.
July 2, 1974

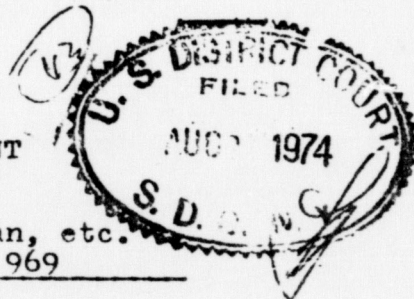
Respectfully submitted,

A handwritten signature in cursive script, reading "C. J. Hartenstine".

Charles J. Hartenstine
United States Magistrate

ORDER, JUDGE METZNER VACATING JUDGMENT
AND DISMISSING COMPLAINT

Norman B. Oppenheimer, as Custodian, etc.
Harold Bernstein, et al., 73 Civ. 969



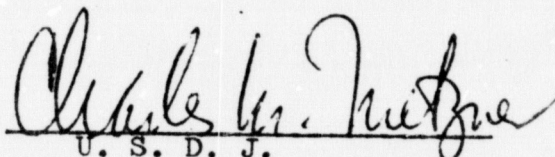
On July 2, 1974 Magistrate Hartenstine filed a report with this court recommending that the judgment of default be vacated on the ground that this court lacks jurisdiction of the subject matter of the action. On the same day a copy of the report was mailed to the attorney for the plaintiffs. No objection to the report has been filed.

I have reviewed the file in this case and the report of Magistrate Hartenstine. I agree with his statement of the facts and the law.

Judgment of default vacated and the complaint is dismissed.

So ordered.

Dated: New York, N.Y.
August 9, 1974


U. S. D. J.

MICROFILM

AUG 12 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

NORMAN B. OPPENHEIMER, as
Custodian, et al.,

Plaintiffs,

-against-

HAROLD BERNSTEIN, et al.,

Defendants.

----- X



MAGISTRATE'S
REPORT

73 Civ. 969
(CMM)

On May 22, 1974, plaintiffs obtained an order signed by Judge Metzner (1) granting judgment in favor of plaintiffs against defendant Hancock Securities Corporation ("Hancock") on default, and (2) referring this case to the undersigned for an inquest to determine the amount of plaintiffs' damages. Judgment in accordance with that order was entered May 24, 1974.

From the record made during the inquest, and from my review of the court file (including prior proceedings before Judge Metzner), it appears that this court lacks jurisdiction of the subject matter. Therefore, it is my recommendation that the judgment

of this court may operate. Accordingly, it is my recommendation that the default judgment entered against the defendant Hancock Securities Corporation on May 24, 1974, be vacated and that this action be dismissed for lack of jurisdiction of this court over the subject matter.

Dated: New York, N.Y.
July 2, 1974

Respectfully submitted,

C. J. Hartenstine

Charles J. Hartenstine
United States Magistrate

ACKNOWLEDGMENTS OF PURCHASE OF AND SETTLEMENT
DATE BY HANCOCK OF PLAINTIFFS SALE OF SECURITIES

HANCOCK SECURITIES CORP.
79 PINE STREET
NEW YORK, N. Y.

BOOKKEEPER

TRADE
DATE 1/9/68
SETTLEMENT
DATE 2/3/68

QUANTITY	DESCRIPTION	PRICE	AMOUNT	INTEREST	COM.	TAX	NET AMOUNT
1750	Microrelties	4 1/2	7675.00				7675.00

RECEIVE FROM
Vince C. Hickey
26 Broadway
New York, N. Y. 10004

☐ INSTRUCTIONS:

BY _____ AUTHORIZED SIGNATURE

HANCOCK SECURITIES CORP.
79 PINE STREET
NEW YORK, N. Y.

BOOKKEEPER

TRADE
DATE 1/9/68
SETTLEMENT
DATE 2/3/68

QUANTITY	DESCRIPTION	PRICE	AMOUNT	INTEREST	COM.	TAX	NET AMOUNT
1500	Microrelties	4 1/2	6750.00				6750.00

RECEIVE FROM
Vince C. Hickey
26 Broadway
New York, N. Y. 10004

☐ INSTRUCTIONS:

BY _____ AUTHORIZED SIGNATURE

HANCOCK SECUR
79 PINE ST
NEW YORK.

QUANTITY	DESCRIPTION	PRICE
14.0	Directies	4 1/2

RECEIVE FROM

Wm. C. Henry

200 N. 10th St.

New York, N. Y. 10004

INSTRUCT

TIES CORP.
REET
N. Y.

BOOKKEEPER

TRADE
DATE

SETTLING
DATE

1/27/44

1/27/44

AMOUNT	INTEREST	COM.	TAX	NET AMOUNT
7875.00				7875.00

24

ONS:

BY

AUTHORIZED SIGNATURE



VILAS & HICKE

26 BROADWAY • NEW YORK, N. Y. 100
PHONE HANOVER 2-7900

YOU SOLD	DESCRIPTION
1,500	MICRONETIC CORP

PRICE

PRINCIPAL

4 1/2

6,750.00

MRS EVELYN OPPENHEIMER

SEE REVERSE SIDE FOR SYMBOL EXPLANATION, CONDITION

Y
04

MEMBERS

NEW YORK STOCK EXCHANGE
AMERICAN STOCK EXCHANGE
MIDWEST STOCK EXCHANGE

INTEREST
OR STATE TAX

13.75

COMMISSION

172.50

FEDERAL
TAX

REG'N FEE
ETC.

NET AMOUNT DUE

\$6,558.75

TRADE DATE

1 09 68

SETTLEMENT DATE

1 15 68

ACCOUNT NO

159921

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49

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES), AN ODD LOT CHARGE IS INCLUDED IN THE PRICE. ON THE NYSE THIS IS 25¢ PER SHARE FOR STOCKS SELLING AT \$55.00 OR ABOVE AND 12½¢ BELOW. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

TERMS AND AGREEMENT

CONFIRMATION OF PLAINTIFFS AGENT OF SALES OF
SECURITIES WITH SETTLEMENT DATE MADE TO HANCOCK



VILAS & H

26 BROADWAY • NEW YORK
PHONE HANOVER 2-

ACHT

YOU
TOLD

DESCRIPTION

PRICE

PRIN

1,750 MICRONETIC CORP

4 1/2

7,8

NORMAN B OPPENHEIMER AS
CUSTODIAN FOR BARBARA ANN
OPPENHEIMER

SEE REVERSE SIDE FOR SYMBOL EXPLANATION

CKEY

K, N. Y. 10004
7900

MEMBERS

NEW YORK STOCK EXCHANGE
AMERICAN STOCK EXCHANGE
MIDWEST STOCK EXCHANGE

IPAL

INTEREST
OR STATE TAX

COMMISSION

FEDERAL
TAX

REG'N FEE
ETC

NET AMOUNT DUE

75.00

21.88

201.25

\$7,651.87

26

TRADE DATE

SETTLEMENT DATE

ACCOUNT NO.

T

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1 09 68

1 15 68

159911

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49

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES), AN ODD LOT CHARGE IS INCLUDED IN THE PRICE. ON THE NYSE THIS IS 25¢ PER SHARE FOR STOCKS SELLING AT \$55.00 OR ABOVE AND 12½¢ BELOW. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

CONDITIONS AND AGREEMENT



VILAS

26 BROADWAY

PHON

EC-77

85

DESCRIPTION

PRICE

1,750 MICRONETIC CORP

4 1/

NORMAN B OPPENHEIMER AS
CUSTODIAN FOR NANCY ANN
OPPENHEIMER

SEE REVERSE SIDE FOR SYMBOL

S & HICKEY

• NEW YORK, N. Y. 10004
E HANOVER 2-7900

MEMBERS

NEW YORK STOCK EXCHANGE
AMERICAN STOCK EXCHANGE
MIDWEST STOCK EXCHANGE

PRINCIPAL	INTEREST OR STATE TAX	COMMISSION	FEDERAL TAX	REG N FEE ETC	NET AMOUNT DUE
2 7,875.00	21.88	201.25			\$7,651.87

TRADE DATE	SETTLEMENT DATE	ACCOUNT NO	T	•	•	SR
1 09 68	1 15 68	859821	1	4	1	49

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES), AN ODD LOT CHARGE IS INCLUDED IN THE PRICE. ON THE NYSE THIS IS 25¢ PER SHARE FOR STOCKS SELLING AT \$55.00 OR ABOVE AND 12½¢ BELOW. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

EXPLANATION, CONDITIONS AND AGREEMENT.

28

LETTER FROM HANCOCK TO SEC DATED 4/30/70

LAW OFFICES
OF

KIMMELMAN, SEXTER, SOBEL & CHRISS

25 BROADWAY
NEW YORK, N.Y. 10004

BIR DO 9-0000

MORTON L. KIMMELMAN
ALLAN S. SEXTER
ARTHUR H. SOBEL
ALVIN CHRISS
PETER SZABADZ

SEC. EXCH. COMM.
N. Y. REGIONAL OFFICE
RECEIVED

7/11
April 30, 1970

MAY 4 - 1970

☐ Duffy ☐ ☒ ☐
☐ Moran ☐ ☒ ☐
☐ Handler ☐ ☒ ☐

United States
Securities & Exchange Commission
Regional Office
26 Federal Plaza
New York, N.Y. 10007

Attention: Mr. Kevin Thomas Duffy,
Regional Administrator

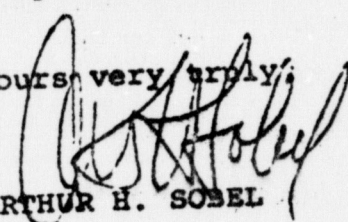
Re: Hancock Securities Corporation
Financial Reports

Dear Mr. Duffy:

In response to your letter of April 28th,
1970, I respectfully enclose a copy of our letter
of April 14th, 1970 to the National Association
of Securities Dealers, Inc.

Please contact us if we can be of any
further assistance to you regarding the registrant.

Yours very truly,


ARTHUR H. SOBEL

AHS:rl
encl.

April 14, 1970

National Association of
Securities Dealers, Inc.
338 Seventeenth Street Northwest
Washington, D.C. 20006

Attention: Kenneth L. Marshall,
Financial Administrator

- Re: Hancock Securities Corporation

Dear Mr. Marshall:

We return to you herewith, the annual financial reports, which you sent to the above referenced registrant.

Hancock Securities Corporation is presently out of business and has not conducted business for the past several months. We are in the process of preparing liquidation and dissolution documents for the corporation.

After payment of all creditors, the registrant is insolvent and retaining accountants to prepare these forms would be a severe hardship.

We trust that in light of the above, preparation of these forms will not be required.

Yours very truly,

ARTHUR H. SOBEL

AHS:lp
Enclosures

STATE OF NEW YORK)
: SS:
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of Oct. 1974 deponent served the within *Appellee* upon *Mortimer Tower*

attorney(s) for *Appellee*

in this action, at

*24 Barrington Rd.
Millville, NY 11746*
the address designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this

23 day of *Oct.* 1974

William Bailey
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1976

